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M E M O R A N D U M

DATE: November 4, 1982

TO: Dee C. Hansen, State Engineer
~~Stan Green~~, Directing Appropriations Engineer
Edward Feldt, Utah Lake/Jordan River Area Engineer
UTAH DIVISION OF WATER RIGHTS

FROM: Dallin W. Jensen, Assistant Attorney General

RE: Becksteads v. Dee C. Hansen and Salt Lake City,
Salt Lake County Civil No. 82-8628

Attached are copies of Plaintiffs' Complaint and our proposed Answer in the above-entitled appeal from the State Engineer's 8/27/82 Memorandum Decision rejecting Application No. 51068.

Please review these documents and give me any suggestions you may have for inclusion in our Answer. Please pay particular attention to the allegations contained in Paragraphs 17, 18, 19 and 20 of the Complaint (as well as our responses thereto). Also, we should check the Hearing records and see what really happened.

As always, thanks.

Attachments

DWJ/jr

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IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

GARTH R. BECKSTEAD, and
MELISSA F. BECKSTEAD, a
widow,

Plaintiffs,

vs.

DEE C. HANSEN, as State
Engineer of the State of
Utah, and SALT LAKE CITY
CORPORATION, a municipal
corporation of the State
of Utah,

Defendants.

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Civil No. 82-8628

C O M P L A I N T

Plaintiffs complain against defendants and against each
of them and for causes of action allege:

1. Plaintiff Garth R. Beckstead and Melissa F. Beckstead,
a widow, now are and have been for many years bona fide residents
of Salt Lake County, State of Utah. Garth R. Beckstead resides at
10322 Weeping Willow Drive, Sandy, Utah 84070. Melissa F. Beckstead
resides at 170 Parkway Drive, Midvale, Utah 84047. Melissa F.
Beckstead is the widow of Reed H. Beckstead who died on June 8,
1981, a resident of Salt Lake County, State of Utah. Upon his
death Melissa F. Beckstead, as his widow became the sole surviving
joint-tenant owner of the lands hereinafter described.

2. Plaintiffs bring this action under the provisions of
Sections 73-3-14 and 15, Utah Code Annotated, 1953, as amended,
for a plenary review of the decision of Dee C. Hansen, as State
Engineer of the State of Utah dated August 27, 1982, whereby he
rejected and denied application No. 51068 (57-8372) filed March 20,
1978, to appropriate 7 gallons of water per minute for domestic
purposes for 15 families, from a developed spring called the

"Kenneth Spring" located on privately owned land, to which legal title on March 20, 1978, was vested in Reed H. Beckstead and Melissa F. Beckstead, his wife, as joint tenants with full rights of survivorship which record owners had agreed to sell and convey to said Garth R. Beckstead upon performance of certain work including the building of access road. By this action the plaintiffs seek a trial de novo in the District Court for Salt Lake County, State of Utah.

3. Defendant Salt Lake City Corporation now is and has been at all times herein mentioned, a municipal corporation of the State of Utah, with offices in Salt Lake City, State of Utah.

4. Defendant Dee C. Hansen as State Engineer of the State of Utah, for more than 5 years has been and now is the duly appointed, qualified and acting State Engineer of the State of Utah, with offices in Salt Lake City, State of Utah.

5. At no time has Salt Lake City Corporation ever had in operation any sanitary water system to serve the needs of people having lands within the Southeast quarter of Section 19, Township 1 South, Range 3 East, of the Salt Lake Meridian, or other privately owned lands within Lamb's Canyon, in Salt Lake County, Utah.

6. Charles W. Wilson was the Salt Lake City water superintendent from about 1953 to about 1979 or 1980. *check*

7. During the summer of 1973 plaintiff Garth R. Beckstead was engaged in construction of a private road within the East half of the Southeast quarter of Section 19, Township 1 South, Range 3 East, Salt Lake Meridian, which was patented land which his father had purchased in 1939, together with water rights, which road building was part of the consideration for the purchase of a tract of land from his parents. In following a course to get elevation as recommended by an engineer with the equipment he had rented he encountered uneven swamp areas, marsh areas and obnoxious mosquito havens which made it difficult to work. The equipment got stuck, and it became necessary to haul in a number of loads of coarse gravel

to get the earth-moving equipment through marshes and swamp areas, and to reclaim such marsh and saturated areas , bogs and mosquito havens, in 1974, and in 1975. In spite of the gravel fill said equipment became stuck, and it became necessary to bring in a backhoe to dig out said equipment. Subsequently, the swamp area was reclaimed and surveyed, with the following as the approximate area:

Beginning at a point 390 feet East and 30 feet South from the Northwest corner of the Southeast quarter of the Southeast quarter of Section 19, Township 1 South, Range 3 East, Salt Lake Meridian, and running thence North 85° East 25 feet; thence North $74^{\circ} 45'$ East 100 feet; thence South $81^{\circ} 36'$ East 70 feet; thence South 24° East 30 feet; thence North $74^{\circ} 45'$ East 60 feet; thence North 122 feet; thence North $55^{\circ} 32'$ West 132 feet; thence South $34^{\circ} 08'$ West 125 feet; thence North $55^{\circ} 32'$ West 100 feet; thence South $34^{\circ} 08'$ West 170 feet; thence South $77^{\circ} 23'$ East 100 feet, more or less, to the point of beginning.

8. Said "wet area" including marshes, swamps and mosquito havens were traced uphill in the above described area to the source, and by probing carefully discovered a flow which increased to 7 gallons per minute, said flow having been measured by a stopwatch.

9. At the time while Garth R. Beckstead was involved in construction of said private road on private property, there was put in circulation by some Salt Lake City employees and by some persons in the Salt Lake County agencies and Health Department the false representation that "Salt Lake City owns all of the waters in Lamb's Canyon and would not allow any development there." The Becksteads called on Charles W. Wilson, Salt Lake City water superintendent to put a stop to such false representation, but he himself falsely declared to Reed H. Beckstead and to each of the plaintiffs herein that "the Beckstead land is part of the Salt Lake City watershed and that Salt Lake City would not allow the Beckstead to develop any of their lands, nor allow the building or any houses thereon or the selling of any lots." Said city water superintendent also declared that Salt Lake City was awarded all of the waters of Lamb's Canyon by a 1912 court decree. Upon reporting such statement to their legal counsel he advised them that in Civil No. 5680 dated May 2, 1912, in paragraph III Salt Lake City was adjudged to have 9.54 cubic feet of primary water, not all of the waters of Lamb's

Canyon, and that by paragraph XVI of said judgment Pinehurst Company, predecessor in title to the Becksteads was adjudged to have the right to divert and use one-sixth of a second foot of primary water "from Lamb's Fork" for irrigation of 10 acres, and the use of the waters of a "certain spring" for culinary and domestic purposes, and for watering 15 head of stock. Counsel also advised plaintiffs that in 1959 he had furnished to the City Attorney and also to Charles W. Wilson a copy of said paragraphs III and XVI of said decree or judgment dated May 2, 1912, in Civil No. 5680, and no claim ever had been made to him by Salt Lake City or by any one else there said judgment had been modified by any subsequent court judgment which could affect adversely the Beckstead water rights. Such are the facts.

10. During a period of about March 1949 to October 1949 Salt Lake City Corporation through Commissioner David B. Affleck and Dow Young of the City Water Department conducted negotiations with Reed H. Beckstead for himself and wife and with Paul E. Reimann for himself and wife, for exclusion of cattle, sheep, horses and domestic animals from their privately owned lands within the watersheds of the Parley's Canyon drainage area, and for the posting of their lands against trespass, hunting and bon fires to protect the watershed areas. As a result of such negotiations in October 1949, it was orally agreed between Salt Lake City acting through Commissioner David A. Affleck with said Reed H. Beckstead and Paul E. Reimann that the Reimanns and the Becksteads would exclude from their privately owned lands in the Parley's Canyon drainage area, all cattle, sheep, horses and all domestic animals; that the Becksteads would post their lands as well as the Reimanns against trespassing, hunting and against unattended bon fires on their respective lands to safeguard said lands against fire; and that Salt Lake City would continue to recognize and not interfere in any way with the diligence rights of the Becksteads under paragraph XVI of the judgment of May 2, 1912, in Civil No. 5680, defining the rights of the Pinehurst Company, and not disparage the Beckstead water rights. The Becksteads and the

Reimanns always have complied faithfully with said agreement to exclude cattle, sheep, horses and domestic animals from their respective lands from and after October 1949, and by October 1949 they had posted their respective lands against hunting, trespassing, and against bon fires, and notwithstanding some trespassers came upon their privately owned lands to hunt in defiance of those posted signs and tore down such signs, said Becksteads and Reimanns as expeditiously as possible reposted their lands with the same kind of signs. Plaintiffs allege that by reason of full performance by them, Salt Lake City Corporation was and is precluded from repudiating said agreement.

11. By Section 1 of the Fourteenth Amendment to the Constitution of the United States of America, it is specified:

* * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

12. THE CONSTITUTION OF UTAH, ARTICLE I, Declaration of Rights, always has provided:

Section 1: All men [and women] have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; * * * .

Section 7: No person shall be deprived of life, liberty or property, without due process of law.

Section 11: All courts shall be open, and every person for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; * * * .

Section 21: Neither slavery nor involuntary servitude, except as punishment for crime, whereof the party shall have been duly convicted, shall exist within this State.

Section 22: Private property shall not be taken or damaged for public use without just compensation.

13. Neither Salt Lake City Corporation nor any other entity or person ever divested Reed H. Beckstead and/or Melissa F. Beckstead of either land or interest in land or water rights by eminent domain proceedings, nor by any other judicial proceedings, nor by purchase.

14. The Becksteads knew that their attorney had made extensive examinations of their lands during the early 1950's. In the fall of 1973 they had him conduct an examination of the areas described in paragraphs 7 and 8 hereinabove. He reexamined said lands and the wet areas, bogs, and mosquito havens again in 1974. He advised the Becksteads that having been familiar with those lands since 1940 and having made various walk-out examinations thereon, over a period of many years, those bogs, swamps and mosquito havens which he found in 1973 and in 1974 did not exist during the early 1950's. He also advised that the irregularity of the wet areas and mosquito havens indicated to him that some probing operations had been conducted during some previous years with some kind of equipment, without making restitution of the surfaces. He recommended that investigation be conducted as to who had authorized such operations, and when they had been executed and for what purpose.

15. Inquiries made to people in the area disclosed that such operations had been conducted on an "off-and-on" basis from about 1964 to 1967. Inasmuch as the U. S. Forest Service lands were adjacent and the boundary had been surveyed again by licensed surveyors on the recommendation of legal counsel and clearly marked in 1958, he inquired of said Forest Service and was told that it was not involved.

16. Counsel inquired of Charles W. Wilson, Salt Lake City water superintendent if he or any one in his department had any information as to who had conducted any probing operations on said Beckstead lands. Said Charles W. Wilson stated that neither he nor any one in Salt Lake City government knew anything about it, but he would investigate and if he learned anything he would inform said counsel for the Becksteads. Some time in 1975 or 1976 while said Garth R. Beckstead was still building private roads in the Southeast quarter of said Section 19, a man called from the Salt Lake City water department, and told legal counsel that he had conducted an investigation on the Beckstead land, and he declared that "Salt Lake

City owns all the water in Lamb's Canyon"; that he had learned that some one had been draining said swampy areas on said land; that there was no objection to doing that if the landowner saw to it that those waters from those swamps were sent down to Lamb's Canyon creek. Counsel for the Becksteads told said caller that the claim that Salt Lake City "owns all the waters of Lamb's Canyon", was incorrect, and that such representations should be discontinued. Counsel also said that breeding mosquitoes never constituted a beneficial use of water, and that the creation of bogs, swamps and mosquito havens not only constituted a nuisance, but also a wanton wastage of water, which wasted water legally could be appropriated by any citizen; that neither Salt Lake City nor any other entity had any constitutional authority to subject a landowner to an involuntary servitude to clean up bogs and mosquito havens and be left with no benefits of title and ownership except the duty to pay taxes. Said caller said that Salt Lake City was going to commence suit if the Becksteads did not recognize Salt Lake City's ownership of all of the waters in Lamb's Canyon, to which counsel responded by saying that he did not believe the Becksteads would be afraid of any such lawsuit, but that neither Salt Lake City nor any one else by making some proclamation could divest a landowner of his water rights nor transfer such rights to the use of water to Salt Lake City.

17. Notwithstanding extensive inquiries and investigations by Reed H. Beckstead and his wife and by their legal counsel, they did not succeed in finding any person who could testify that he was in Lamb's Canyon and saw the invasion of the Beckstead lands in defiance of no trespassing signs, and the destruction to the Beckstead lands in the East half of the Southeast quarter of said Section 19, including the irreparable destruction of the Pinehurst Spring, the creation of swamps, stagnant pools of water, mosquito havens, the alteration of the creek channel and removal of said stream channel from a portion of the Beckstead land without any authorization from the Becksteads and without filing any applica-

ing it necessary for the Becksteads to reclaim the lands where a private road had been planned, which waters causing such stagnant pools, marshes, mosquito havens, constituted a wanton wastage of water and an abandonment of water, entitling any one reclaiming it and putting the same to beneficial use to file on such wastage of water.

21. Plaintiffs allege that the conduct of Salt Lake City involving a cover-up and misrepresentation of facts for a number of years, involved a number of violations of constitutional rights of the Becksteads, was not only clandestine, but with invaders' force and destruction, and by reason of the 1939 amendment to the Utah Water Law, the Becksteads could not have been deprived of water rights by adverse use. Plaintiffs allege that the paragraph XVI of the judgment dated May 2, 1912, Civil No. 5680, never has been modified by agreement of the owners nor by any judicial proceeding, nor by due process of law, involving just compensation for damage to property.

22. Plaintiffs allege that said decision is utterly inequitable and grossly unjust, and by implication attempts to overrule the decisions of the Supreme Court of Utah which hold that water which is wasted becomes subject to appropriation. The decision impliedly attempts to suspend the constitutional rights of the Becksteads as enumerated and quoted in paragraphs 11 and 12 hereinabove set forth, and by unreasonable delays until important witnesses have died, to discriminate in favor of Salt Lake City Corporation, the wrong-doer.

WEREFORE, plaintiffs respectfully request that they be granted judgment against defendants and against each of them:

(a) For judgment against the State Engineer nullifying said decision dated August 27, 1982, after numerous unreasonable delays, involving constitutional rights of the Becksteads which were persistently violated by defendants.


(b) For judgment approving said application No. 51068 (57-3372), and estopping defendant Salt Lake City Corporation from

claiming the benefits from interfering with the Beckstead water rights or destruction of portions of the Beckstead land improvements, or any benefits from years of spurious claims of ownership of "all of the waters of Lamb's Canyon", and adjudging that said defendant Salt Lake City Corporation by reason of the 1939 amendment to the Utah Water Law could not and did not acquire any of the Beckstead diligence rights by adverse use or destruction of the Pinehurst Spring; and that by wastage of water in the course of damaging the Beckstead lands over a period of more than 5 years said defendant Salt Lake City Corporation lost the amount of water so wantonly wasted.

(c) Plaintiffs costs against Salt Lake City Corporation.

(d) For such other and further relief in favor of the plaintiffs which shall be equitable and just in accordance with the provisions of the Constitution of the United States and the State of Utah.

Dated this 23rd day of October, 1982.


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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

GARTH R. BECKSTEAD and MELISSA F.)	
BECKSTEAD, a widow,)	
Plaintiffs,)	ANSWER OF STATE ENGINEER
v.)	
DEE C. HANSEN, as State Engineer)	
of the State of Utah; and SALT)	
LAKE CITY CORPORATION, a municipal)	
corporation of the State of Utah,)	Civil No. 82-8628
Defendants.)	

Dee C. Hansen, State Engineer of the State of Utah and one of the above-named Defendants, answers the Complaint filed by Plaintiffs herein as follows:

FIRST DEFENSE

Plaintiffs' Complaint fails to state a claim against Defendant State Engineer upon which relief can be granted.

SECOND DEFENSE

This Court lacks jurisdiction to review the Memorandum Decision of the State Engineer dated August 27, 1982, rejecting Application No. 51068, because of Plaintiffs' failure to file an action in the District Court pursuant to §73-3-14, Utah Code Annotated 1953, as amended, to review a decision of the State Engineer within sixty (60) days after issuance of said decision.

THIRD DEFENSE

Plaintiffs' action is barred and must be dismissed under the express provisions of §73-3-15, Utah Code Annotated 1953, as amended, for failure to file an action in the District Court to review a decision of the State Engineer within sixty (60) days of the date of the decision.

FOURTH DEFENSE

Plaintiffs' Complaint purports to raise issues and to have the Court adjudicate matters which are beyond the scope of those issues which could be legitimately raised before Defendant State Engineer. The authority of the State Engineer regarding Application No. 51068 (57-8372) was limited to a determination of whether said Application satisfied the requirements of §73-3-8, Utah Code Annotated 1953, as amended, and—based upon the data and evidence before him—to determine whether said Application should be approved, with or without conditions, or should be rejected. This Court lacks jurisdiction in this action to adjudicate any issues or to grant any relief on matters which are beyond the scope of the authority of the State Engineer.

FIFTH DEFENSE

1. Defendant State Engineer is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 1.

2. Admits that this action seeks a review of the Memorandum Decision of the State Engineer dated August 27, 1982, rejecting Application No. 51068; admits that said Application was filed on March 20, 1978, and seeks to appropriate 7 gallons of water per minute for domestic purposes from Kenneth Spring; Defendant State

Engineer is without knowledge or information sufficient to form a belief as to the truthfulness of the remaining allegations contained in Paragraph 2, and therefore denies the same; and denies that this action complies with the provisions of §§73-3-14 and -15, Utah Code Annotated 1953, as amended.

3. Admits all of the material allegations contained in Paragraphs 3 and 4.

4. Defendant State Engineer is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 5, and therefore denies the same.

5. Admits all of the material allegations contained in Paragraph 6.

6. Defendant State Engineer is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 7, and therefore denies the same.

7. Defendant State Engineer is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in Paragraph 8, and therefore denies the same; and further denies that Plaintiffs have discovered or developed any new water which is not tributary to existing sources or which could be appropriated without impairing other water rights.

8. In answer to Paragraphs 9 and 10, Defendant State Engineer is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations regarding conversations or events referred to therein, and therefore denies

the same; and further denies all of the remaining allegations contained in said Paragraphs.

9. Admits all of the material allegations contained in Paragraphs 11 and 12.

10. In answer to Paragraphs 13, 14, 15 and 16, Defendant State Engineer is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained therein, and therefore denies the same.

11. In answer to Paragraph 17, Defendant State Engineer is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained therein regarding conversations or events between Plaintiffs and parties other than the State Engineer; denies that Plaintiffs were not given ample opportunity to present information to the State Engineer regarding Application No. 46863 (57-8148) and Change Application No. a-9526; alleges that to the extent Hearing records were kept on said appeals, such records speak for themselves; denies that this Court has jurisdiction to review any action regarding said Applications in this appeal; and denies all of the remaining allegations contained in Paragraph 17.

12. Admits that Plaintiff Garth R. Beckstead filed Application No. 51068 (a copy of which is attached to Plaintiffs' Complaint); alleges that said Application speaks for itself; denies that Plaintiffs were not given an opportunity to present evidence in support of their Application before the State Engineer; Defendant State Engineer is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained therein involving events and conversations between

Plaintiffs and parties other than the State Engineer, and therefore denies the same; denies that Plaintiffs have discovered or developed any new water which is not tributary to existing sources or which could be appropriated without impairing other water rights; and denies all of the remaining allegations contained in Paragraph 18.

13. In answer to Paragraph 19, admits that notice of said Application was published and protested by Defendant Salt Lake City Corporation; admits that Plaintiff Garth R. Beckstead responded to said Protest and that certain other pleadings were filed in this matter before the State Engineer; alleges that said documents speak for themselves; denies that Plaintiffs were not given ample opportunity to present whatever information they desired to the State Engineer prior to his ruling on said Application; and denies all of the remaining allegations contained in Paragraph 19.

14. Admits that Defendant State Engineer issued his Memorandum Decision rejecting Application No. 51068 on August 27, 1982, and that a copy of said Decision is attached to Plaintiffs' Complaint; and denies all of the remaining allegations contained in Paragraph 20.

15. In answer to Paragraph 21, Defendant State Engineer alleges that he is without knowledge or information sufficient to form a belief as to whether or not the parties have entered into any agreement regarding the rights awarded in Civil No. 5680 or whether said action has subsequently been modified by the Court, and therefore denies the same; and denies all of the remaining allegations contained in Paragraph 21.

16. Denies all of the material allegations contained in Paragraph 22.

SIXTH DEFENSE

Defendant State Engineer alleges as a separate and affirmative defense that the rejection of Application No. 51068 is correct and proper in all respects and that this Court should enter a judgment dismissing Plaintiffs' Complaint and affirming the Memorandum Decision of the State Engineer dated August 27, 1982, rejecting said Application.

WHEREFORE, Defendant State Engineer prays that Plaintiffs' Complaint be dismissed and that his Memorandum Decision of August 27, 1982, rejecting Application No. 51068, be sustained, and for such other and further relief as the Court may deem just and proper.

DATED this _____ day of November, 1982.

DALLIN W. JENSEN
Assistant Attorney General

MICHAEL M. QUEALY
Assistant Attorney General

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